

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

KYLE FELLERS, ANTHONY FOOTE,
ELDON RASH, and NICOLE FOOTE,

Plaintiffs,

v.

MARCY KELLEY, Superintendent of
Schools, State Administrative Unit 67, in
her official and individual capacities;
MICHAEL DESILETS, Athletic
Director, Bow High School, in his official
and individual capacities; MATT FISK,
Principal, Bow High School, in his
official and individual capacities;
PHILLIP LAMY, Lieutenant, Bow Police
Department, in his individual capacity;
STEVE ROSSETTI, soccer referee, New
Hampshire Interscholastic Athletic
Association, in his individual capacity;
and BOW SCHOOL DISTRICT,

Defendants.

Case No. 1:24-cv-311

DECLARATION OF NICOLE FOOTE

I, Nicole Foote, declare the following based on my personal knowledge:

1. I live in Bow, New Hampshire, with my husband Anthony and our two daughters. Both of my daughters attend public schools in the Bow School District.
2. My oldest daughter is a senior and the captain of the Bow High School varsity girls' soccer team.

3. Along with my husband, I am heavily involved in my children's schooling and extracurricular activities. I attend games regularly and often must drive my children to practices, games, and other events. Bow High School usually does not charter buses to bring the soccer team to away games, so the players' parents must sign up to drive the team. I am often one of the drivers.

4. I am a proponent of restricting women's sports teams to people who were born biological women. I believe that allowing biological males to play women's sports undermines fair competition, puts biologically female athletes at risk for physical and mental injury, and undermines much of the social progress that women have made over the past fifty years.

5. I do not believe people can change their biological sex based on their own feelings about their sex or gender. I realize that some people disagree with me about that issue, and that is fine. The First Amendment protects their right to do so.

6. I am aware that in a recent decision, *Tirrell v. Edelblut*, Case No. 24-cv-251-LM-TSM, 2024 U.S. Dist. LEXIS 162185 (D.N.H. Sept. 10, 2024), a federal court preliminarily enjoined the New Hampshire Department of Education from enforcing a state law that limited participation in interscholastic women's sports teams to biological females. I attended the hearing in this case that led to the court issuing that decision.

7. I am aware that Parker Tirrell, a biological male and one of the plaintiffs in *Tirrell v. Edelblut*, plays on the Plymouth Regional High School girls' varsity

soccer team. Bow High School's soccer team was scheduled to play the Plymouth team on September 17, 2024.

8. I have no issues with Parker Tirrell. Tirrell has, according to public reports, been on male puberty blockers for over a year, and he is not the largest player on Plymouth's team. I do not think it is likely that my daughter will be hurt playing against him. Tirrell played for Plymouth Regional during last year's soccer season too, and I did not protest at Plymouth Regional's game against Bow High School that year.

9. This year is different, however, because of the recent court decision. I fear that the participation of players who are biological males, but who believe they are women (or trans females) will serve as a precedent to force girls to compete with male athletes who have been through male puberty and have a great biological advantage over female athletes. Girls in other states have been injured competing against larger male athletes, and I worry that the recent court decision will lead to that occurring in New Hampshire. I also do not believe it is fair to biological females to have to compete with male athletes, who are bigger, faster, and stronger than many females.

10. On or about September 13, 2024, I contacted Bow High School's Athletic Director, Mike Desilets, to complain about the situation. We had a respectful discussion about my concerns with having biological boys playing against biological girls, but Desilets told me that the court decision prevented the school district from

doing anything. After our meeting, Desilets emailed me to communicate a similar message.

11. On September 16, the evening before the game, Desilets emailed all soccer families, including me, warning them that “Bow High School’s status as a member of the [New Hampshire Interscholastic Athletic Association]” “and the school’s “Athletics Handbook” impose obligations “regarding sportsmanship and sideline behavior” so that “any inappropriate signs, references, language or anything else present at the [September 17] game will not be tolerated.” Desilets claimed, however, that “some differing opinions regarding tomorrow’s game . . . is perfectly fine.”

12. My husband and I received Desilets’ email. My husband responded to Desilets with an email saying that Bow School District’s leadership is “weak, ineffective, and completely out of touch” and needs to “Stand up for women” and “Protect our daughters before someone gets hurt.” I was copied on that email.

13. On September 17, I attended Bow High School’s varsity girls’ soccer game with my husband. The soccer game occurred at the Bow High School soccer field, which is public property and part of the public high school’s campus. We sat down close to mid-field and watched the first half of the game with the other attendees.

14. My husband brought several pink wristbands to the game, decorated with two Xs to symbolize the female chromosomes. He gave me one of the wristbands, which I put in my pocket.

15. During the first half, I observed that Bow High School's principal, its athletic director, police officers, and other school administrators were at the game—which is not normal at a regular season soccer game. I suspected that the officials were there because of the issue over biological boys playing girls' soccer, and they had some kind of plan to prevent people from speaking about biological boys playing in girls' sports. This made me very nervous and uncomfortable, so I left the wristband in my pocket. I am not aware of anyone wearing a wristband during the first half of the game.

16. During the second half of the game, my husband put on his wristband. I did not put my wristband on because the presence of the school administrators and the police officers made me uncomfortable. I was worried about what might happen if I wore the wristband.

17. I was present when Desilets told my husband he was not allowed to protest by wearing the wristband. I also watched Desilets, Principal Matt Fisk, and Lieutenant Phillip Lamy confront Kyle Fellers about wearing the wristband. After Fellers left, I watched Desilets, Fisk, and the referee pressure Fellers' father-in-law, Eldon Rash, about the same thing. All of these confrontations made me even more nervous about wearing the wristband that night and so I did not put a wristband on. I would have put on the wristband if it wasn't for the actions of the school administrators, the police officer, and the referee to attempt to intimidate Kyle Fellers, my husband, and Eldon Rash.

18. There was no commotion or disruption of the game, until Desilets, Fisk, and Lamy began confronting my husband and Fellers about their wristbands. Most people at the game—players and spectators—would probably not have noticed the wristbands, if school officials had not made a big deal about it.

19. On September 19, 2024, I learned that Bow School District took out a No Trespass Order against my husband, which prohibited him “from entering the buildings, grounds, and property of the Bow School District” including “parking lots, and athletics fields” and “from attending any Bow School District athletic or extra-curricular event, on or off school grounds” until September 23, 2024.

20. The No Trespass Order disrupted my family’s life beyond causing my husband to miss some of our daughter’s games. Because of my work obligations, my husband is typically responsible for taking our kids to school in the morning. But the No Trespass Order did not include any exceptions to allow him to enter school property for this reason, and our oldest daughter had to make a trip to the middle school while the No Trespass Order was in effect. These restrictions on my husband’s movements created inconvenience for me and my family.

21. I attended the soccer games on Friday, September 20, 2024, and Tuesday, September 24, 2024, both of which took place at Bow High School. I took my pink wristband to both games and wore it underneath my long sleeves. I do not believe it was visible or easy to see. I also attended a game at the middle school on that Monday, September 23, 2024, for our youngest daughter, that Andy couldn’t attend, and I wore my wristband under a sweatshirt, where I do not believe it was visible.

22. I wore the wristband because I wanted to support my husband after Bow School District banned him from school property. But I remained nervous about wearing it openly and did not want to draw attention to myself. I was worried about getting banned from school property if I openly displayed the wristband in a highly visible way while attending the games.

23. I intend to attend sporting events and other extracurricular events, on and off school grounds, throughout the fall sports season, the school year as a whole, and future school years, including the upcoming soccer games on October 5, October 8, and October 11.

24. I would silently protest on the sidelines at some of these events, including the soccer games scheduled on October 5, October 8, October 11, October 15, October 18 and October 25 and any playoff games, in defense of girls' and women's sports, by openly wearing a pink wristband with the letters XX visible on it in black ink. I believe, however, that for the foreseeable future during this and future school years, protesting in a highly visible way could cause Defendants to take out a No Trespass Order against me, as they did with my husband. As a result, I am only willing to show my support for girls' and women's sports in more subtle ways, as I did at the September 20 and September 24 games.

25. I also worry that protesting on the sidelines in a highly visible way during this and future school years could potentially cause Bow School District sports teams to forfeit games, have games suspended, and become ineligible for the playoffs.

26. I find it frustrating and degrading that Bow School District has prohibited me from expressing my viewpoint, especially when I have seen other individuals promote their own viewpoints and opinions at school events and on school property. I have seen, for example, people wearing clothing at sporting events displaying the Pride flag or support for LGBTQ rights. I have seen people wearing clothing during sporting events supporting politicians, like Kamala Harris and Donald Trump. I have not observed or heard that Bow School District has prohibited any of these other people from expressing their views on school property.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 2024.


Nicole Foote